

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 MCALLEN DIVISION

4 MEDCARE EMERGENCY MEDICAL § CASE NO. M-21-CV-445  
5 SERVICES § MCALLEN, TX  
6 VERSUS § THURSDAY  
7 § MAY 4, 2023  
8 § 3:17 PM TO 3:32 PM  
9 CITY OF PHARR, et al., §

10 MOTION HEARING

11 BEFORE THE HONORABLE RICARDO H. HINOJOSA  
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 FOR THE PARTIES: SEE NEXT PAGE  
15 COURT REPORTER: ANTONIO TIJERINA  
16 COURT CLERK: UNKNOWN  
17  
18  
19  
20

21 TRANSCRIPTION SERVICE BY:

22 Veritext Legal Solutions  
23 330 Old Country Road, Suite 300  
24 Mineola, NY 11501  
25 Tel: 800-727-6396 ▼ www.veritext.com

Proceedings recorded by electronic sound recording; transcript  
produced by transcription service.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES:

FOR THE PLAINTIFF:

FRANCISCO R. CANSECO, ESQUIRE  
Francisco Canseco  
19 Jackson Court  
San Antonio, TX 78230  
210-901-4904

FOR THE DEFENDANTS:

DENTON NAVARRO ROCHA BERNAL PC  
Robert L. Drinkard  
701 East Harrison Avenue  
Suite 100  
Harlingen, TX 78550  
956-421-4904

1                   MCALLEN, TEXAS; THURSDAY, MAY 4, 2023; 3:17 P.M.

2                   THE COURT: Next case is the very simple case of M-  
3 21-445, Medcare Emergency Medical Services Incorporated versus  
4 City of Pharr and others. And I said very simple case, but  
5 that was a joke, not truthful.

6                   MR. CANSECO: Your Honor --

7                   THE COURT: Can you now --

8                   MR. CANSECO: -- Francisco Canseco for the plaintiff.  
9 It's a pleasure to be here in your fair city.

10                  MR. DRINKARD: Robert Drinkard here on behalf of the  
11 defendants.

12                  THE COURT: It's not a pleasure for you to be here?

13                  MR. DRINKARD: Always a pleasure, Your Honor.

14                  THE COURT: Okay. That was perfect.

15                  This case continues to be the same case that's been  
16 here for a while. The plaintiffs complain that they're upset  
17 that the City of Pharr decided that they were going to deal  
18 with a particular group with regards to ambulance services. Is  
19 that correct?

20                  MR. CANSECO: I think that that's not correct, Your  
21 Honor. If I may just elaborate on that. First of all --

22                  THE COURT: Well, you represent one group, and the  
23 complaint is that the City has entered into some agreements  
24 with regard to some other group.

25                  MR. CANSECO: Well, not really. No, sir. We have --

1 THE COURT: Well, then what really?

2 MR. CANSECO: Well, we have a situation, adequately  
3 plead, where they went into negotiations for defunct ambulance  
4 company. They bought the ambulance company notwithstanding --

5 THE COURT: Right.

6 MR. CANSECO: -- that there were ambulance services -  
7 - servicing Pharr for many years before.

8 THE COURT: I know, but how can they be prevented  
9 from running their own?

10 MR. CANSECO: They're not. The prevention is not  
11 from running their own. It's what they did with it and how  
12 they behaved towards my --

13 THE COURT: Well, I mean, you cannot -- I mean, you  
14 may be a business that has done business with the city for a  
15 period of time, but it isn't for life.

16 MR. CANSECO: No. Granted, but what they did was --

17 THE COURT: I mean, I can understand if, okay, well,  
18 they didn't post it or whatever. But still, I mean, you  
19 haven't -- you don't have a contract forever. You're just  
20 saying they've always used it, but now they've gone to somebody  
21 else, or some other group, or whatever, or they bought one  
22 themselves.

23 MR. CANSECO: But they have completely foreclosed my  
24 client from operating there, and at the same time have moved --

25 THE COURT: Okay. How did they foreclose your client

1 from operating?

2 MR. CANSECO: Well, by --

3 THE COURT: Your client can continue to deal with  
4 whoever calls your client.

5 MR. CANSECO: Granted, but they've gone around to  
6 other areas outside of their jurisdiction and, to use a term,  
7 blackballed our client from --

8 THE COURT: Well, how could they blackball your  
9 client to other areas outside their jurisdiction?

10 MR. CANSECO: Because of their clout with regards to  
11 the hospitals and the position of the mayor of the city.

12 THE COURT: Well, that's the hospital's decision as  
13 to who they want or don't want.

14 MR. CANSECO: Understandably, but you've got a  
15 collusion between the mayor and the city council and the board  
16 of the hospital that says no longer are we going to accept  
17 Medicare Emergency.

18 THE COURT: Well, the hospital isn't going to say no  
19 if somebody wants to call the insurance company of your client,  
20 the ambulance company of your client. I mean, the hospital  
21 can't say no. They're not going to say, "No, unless you come  
22 with such-and-such an ambulance. Then we won't take you." The  
23 hospitals are going to take whoever shows up.

24 MR. CANSECO: Judge, it's -- in our pleadings, we go  
25 into all that as to why --

1 THE COURT: I mean, you cannot just be upset because  
2 there's now a competitor.

3 MR. CANSECO: No. That's not the issue, Judge.

4 THE COURT: Well, then what is the issue? Your  
5 client will continue --

6 MR. CANSECO: The issue is that they have gone out of  
7 their way --

8 THE COURT: Your client will continue to operate the  
9 ambulance service, right?

10 MR. CANSECO: Correct.

11 THE COURT: Okay. And so what is the problem then?

12 MR. CANSECO: The problem --

13 THE COURT: The City hasn't said, "You cannot go to  
14 this ambulance company. You have to use this other one. The  
15 City cannot say that and hasn't said that."

16 MR. CANSECO: The problem is, Your Honor, that they  
17 have used monopolistic tactics in order to prevent my client  
18 from operating --

19 THE COURT: So what are the monopolistic things?

20 MR. CANSECO: Well, what they've done is that they've  
21 gone around and they said, "Don't use Medcare EMS," and they've  
22 gone around, and they've poached a lot of the employees --  
23 longtime employees of Medcare, forcing Medcare to use an  
24 enormous amount of overtime with remaining employees so that it  
25 costs them a heck of a lot more.

1           And also, they have -- they have taken away a lot of  
2           their business through their monopolistic practices, coupled  
3           with the ordinance that they passed that is going to restrain a  
4           lot of that use, which constitutes a taking of property without  
5           just compensation.

6           THE COURT: Okay. So how are they going to be able  
7           to stop from somebody using whatever service they want to use?

8           MR. CANSECO: I'm sorry, Judge. What?

9           THE COURT: I mean, how can they stop anybody from  
10          using whatever service they want to use? I mean, basically  
11          what you're saying is, "My client thinks it should only be the  
12          only service," and they're saying that they're -- and accusing  
13          them of saying that their service is the only service. There  
14          are actually two services in the City of Pharr now.

15          MR. CANSECO: Now they are.

16          THE COURT: Yeah. but I mean, your whole claims are  
17          they want to conduct everything, and at the same time, you're  
18          trying to say, "Well, my clients should be just the only people  
19          that can operate here."

20          MR. CANSECO: No. That's not the case, Your Honor.

21          THE COURT: Well, I mean, you seem to be upset that  
22          there's a permit given to another site --

23          MR. CANSECO: No, sir.

24          THE COURT: -- from the standpoint of another  
25          ambulance service.

1 MR. CANSECO: What we need to develop, Your Honor,  
2 and we've adequately pled, is the monopolistic practices, the  
3 self-serving practices --

4 THE COURT: Okay. But the monopolistic practices --  
5 your client can continue operating in the City of Pharr, right?

6 MR. CANSECO: They can. Now they can because they've  
7 just recently been granted a permit to do so after many months  
8 of having applied and it not being acted upon.

9 THE COURT: Okay. But there is the ability for your  
10 client to operate in the City of Pharr.

11 MR. CANSECO: Now there is, yes.

12 THE COURT: Okay. It's --

13 MR. CANSECO: But the damage has already been done.

14 THE COURT: And how has the damage already been done?

15 MR. CANSECO: The damage has already been done with  
16 the practices that the city -- or the ambulance service imposed  
17 on the whole area within Hidalgo County to stop my client from  
18 further operation.

19 THE COURT: But how could the City of Pharr stop your  
20 client from operating any other place?

21 MR. CANSECO: By going out there and, like I said,  
22 using its political clout to make the other hospitals and other  
23 places to have the exclusive use of the Hidalgo County EMS  
24 rather than anybody else.

25 THE COURT: Well, I don't know how they could



1 possibly make any other hospital or any hospital do that.

2 MR. CANSECO: If --

3 THE COURT: I mean, in the end, it's going to be  
4 whoever the patient wants.

5 MR. CANSECO: If your chief shareholder --

6 THE COURT: And your clients are still operating in  
7 the City of Pharr, right?

8 MR. CANSECO: Yes, sir.

9 THE COURT: Okay. And so there hasn't been any  
10 hospital that says, "We're not going to take you unless you  
11 take -- bring in a certain ambulance service."

12 MR. CANSECO: Right now, as far as -- what I  
13 understand, that is the case where hospitals are saying, "We're  
14 not going to use your services, and we're going to discourage  
15 the use of your services for --"

16 THE COURT: There cannot -- I cannot believe that  
17 there's a hospital that's saying, "We care what ambulance  
18 service brings you here," as opposed to, "That ambulance  
19 service -- although you have a terrible emergency in the  
20 ambulance, we're not going to let you come in as a patient  
21 because we don't like that ambulance service, and we want you  
22 to use another one, so go back, and get another ride from  
23 somebody else, and then come back in." I cannot believe that a  
24 hospital is doing that.

25 MR. CANSECO: Those facts we seem to --

1 THE COURT: I mean, and if -- and if you want me to  
2 believe that, then this is going to have to be a motion for  
3 summary judgment when we actually have evidence rather than  
4 just arguments here.

5 MR. CANSECO: That's right, and that needs to be  
6 developed through discovery.

7 THE COURT: Right. And I don't have any problem with  
8 issuing a docket control order for 120 days.

9 MR. CANSECO: Perfect.

10 THE COURT: Because right now you're telling me  
11 completely what you think is the case. They're -- on the other  
12 hand, they're saying, "No, that's not the case." So I cannot  
13 make a -- I cannot grant a motion to dismiss when we have  
14 arguments from both sides with regards to what the facts are.

15 Having said that, I also understand that you cannot  
16 be limited -- or you should not be limited to just one  
17 ambulance service. People should be able to have choices.

18 MR. CANSECO: I agree with you. Yes, sir.

19 THE COURT: And so far, the argument is, "Well,  
20 you're telling hospitals not to take us," or whatever. Well, I  
21 don't know that hospitals would do that. So that's why we're  
22 going to issue a docket control order. And I don't know that  
23 you're going to do it in four months. Can you all do it in  
24 four months, or do you all need six months?

25 MR. CANSECO: I think --

1 MR. DRINKARD: Judge, my only concern with that -- I  
2 mean, everything -- pretty much everything he just said is not  
3 in his petition. Let's assume he's raising those things  
4 factually now. He has sued the entire City Commission  
5 individually for voting on an ordinance, and he wants to --

6 THE COURT: Right. I mean, he's actually saying that  
7 the City Commission cannot make any other changes or do  
8 anything other than -- my client is the only one that can  
9 operate in this city.

10 MR. DRINKARD: Correct. They can't -- they can't --

11 THE COURT: And they have no right to -- even if they  
12 think there's cheaper services, or longer services, or  
13 whatever, they have no right to let anybody else operate.  
14 That's why I don't grant -- I have a problem with that side of  
15 the story also.

16 MR. DRINKARD: No, I understand, Your Honor.

17 THE COURT: And then it's like, "We don't like the  
18 fact that they've given permission to somebody else to operate  
19 here because we should be the only ones operating here."  
20 That's basically the argument, and I don't know that that's  
21 really a violation of any law to say that you will forever be  
22 the only ambulance service that can operate in the City of  
23 Pharr.

24 MR. DRINKARD: And I don't think that is the case,  
25 Your Honor.

1 THE COURT: Well, I mean, there isn't -- nobody has  
2 such a permit, and his claim is -- their claim is, "Well, they  
3 should've not allowed somebody else, and now they're urging  
4 other people to just go to somebody else rather than to us.  
5 That's why we'll need a motion for summary judgment." That's a  
6 little different than saying, "Well, you have to do them, or if  
7 not, we're not going to let you go to them," or whatever.

8 He also is making some claims about all these  
9 hospitals saying that the hospitals are demanding that you use  
10 a certain particular ambulance service and that they're not  
11 going to take if you're not -- you don't come in on that  
12 ambulance service. Well, he can depose the hospitals too to  
13 find out if that's really true.

14 MR. DRINKARD: Yeah. He's --

15 THE COURT: I find it hard to believe because I would  
16 think hospitals have a duty. Whoever shows up in an emergency  
17 room, in an ambulance, they're not going to say, "Who brought  
18 you?" They're going to say, "Come on in. Let me see what's  
19 wrong with you."

20 MR. DRINKARD: Correct. The concern I have, Your  
21 Honor, is he's already said that if he's allowed to do  
22 discovery, he wants to depose every City Commissioner and grill  
23 them about why they simply voted on an ordinance, and I've  
24 urged their qualified immunity. I don't think he gets to do  
25 that without their qualified immunity being heard. It sounds

1 like that's being denied today, but that's what he wants to do.  
2 He's made no bones about the fact, "I'm going to grill the  
3 mayor and every City Commissioner."

4 THE COURT: You have a right to file any motion  
5 saying to quash the deposition of somebody with regards to  
6 you're saying that they don't have the constitutional right to  
7 do that. I don't know how they don't. I mean, they -- the  
8 fact that the mayor or whoever else wants some other thing,  
9 that's why they're the mayor. People can vote against them in  
10 the next election or whatever. I mean, it isn't a matter for  
11 the courts to be deciding.

12 MR. DRINKARD: Well, I mean, to the extent that  
13 they're entitled to qualified immunity for simply exercising  
14 voting rights --

15 THE COURT: Right. And you can go ahead and file  
16 that, and go ahead and do that if you want to.

17 MR. DRINKARD: Okay. So the motion is denied as to  
18 all the defendants, Your Honor?

19 THE COURT: What?

20 MR. DRINKARD: The motion to dismiss.

21 THE COURT: I haven't denied anything with regard to  
22 -- the motion to dismiss, yes, but a motion to dismiss on  
23 qualified immunity or whatever, yes, you can. And if you want  
24 to do it before they're deposed, you can refile it that way.

25 MR. DRINKARD: Well, I have urged they're qualified

1 immunity in this first --

2 THE COURT: Okay. I know you have, but I just did  
3 something right now that's -- may require you to go ahead and  
4 file it again. It's being denied right now without prejudice  
5 to refiling based on if and when they get notified that they're  
6 going to be deposed or whatever.

7 I've just, I think, made it quite clear to his side  
8 of the case the idea that these individuals cannot go ahead and  
9 go to whoever they want to for an ambulance service, that's --  
10 you can campaign against them at the next election, but you  
11 can't stop them from doing whatever they want to do, except  
12 unless there's a particular interest or whatever. I don't know  
13 what it is that the claim is here. They don't want another  
14 ambulance company to be used here, but they want to be the only  
15 one to be used here.

16 MR. DRINKARD: That seems to be what they're  
17 alleging.

18 MR. CANSECO: No, Your Honor. That's not what we're  
19 alleging, but that's water under the bridge at this point.

20 I want to make a comment with regards to their claim  
21 for immunity. And I've got cases that I've cited to the Court  
22 that show that when you've got ultra vires acts by governmental  
23 offices, they --

24 THE COURT: I'm not ruling on their qualified  
25 immunity or whatever. If they want to file it again when you

1 notice them for depositions, then we can have that argument at  
2 that point with both sides having actually known that that's  
3 what we're doing. But at this point, I am issuing a docket  
4 control order for 150 days. Okay?

5 MR. CANSECO: Yes, sir.

6 MR. DRINKARD: So I would need to re-urge the motion  
7 to --

8 THE COURT: Yes, if somehow they're going to be  
9 deposed or whatever, and you don't want them to be deposed --  
10 although I don't understand why they wouldn't be deposed --  
11 but, yes. You can do that.

12 MR. DRINKARD: Yeah. No, I'm definitely going to  
13 resist --

14 THE COURT: But even after their depositions, if  
15 they're entitled to qualified immunity, they're entitled to  
16 qualified immunity. Okay? But yeah. You can -- if you want  
17 to try to quash their depositions or whatever, you can. But I  
18 mean, I don't --

19 MR. CANSECO: We wouldn't --

20 THE COURT: Both of these -- his side wants to say,  
21 "Get rid of them. Like us, and we're -- we have a right, and  
22 we can be the only ambulance service." You on the other hand  
23 are saying, "No. You know, I won't let them be deposed or  
24 whatever."

25 MR. DRINKARD: Just the individual city

1 commissioners, Your Honor. That's what concerns me is he wants  
2 to turn this into a circus, badger these commissioners about  
3 why they simply voted on an ordinance.

4 THE COURT: Right. When you get your notices, you  
5 can file your motions with regards to qualified immunity again  
6 so that we know for a fact that they're trying to do that.

7 MR. DRINKARD: Very well, Your Honor.

8 THE COURT: Okay. If you all don't have anything  
9 else, you all can be excused. Thank you all very much.

10 MR. CANSECO: Thank you, Your Honor.

11 THE COURT: Sure.

12 MR. DRINKARD: Thank you, Your Honor.

13 MR. CANSECO: And thank you to your staff.

14 THE COURT: Well, yeah. For sure. But I'm making --  
15 I hope you all understood the point that, I mean, we have a  
16 plaintiff who says, "Well, we're upset because there's another  
17 competitor now being used in our city."

18 And then you threw out the fact that you're claiming  
19 that hospitals are refusing to take somebody from Pharr unless  
20 they came in a certain -- that's a pretty strong statement to  
21 make about as many hospitals as we have in Hidalgo County and  
22 in this area. It's hard to believe that, that hospitals are  
23 demanding that you use a certain service.

24 We'll see you all then. Thank you, all.

25 MR. DRINKARD: Thank you, Your Honor. May we be



1       excused?

2                       THE COURT:   Yes.

3                       (Hearing adjourned at 3:32 P.M.)

4                                       \* \* \* \* \*

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

RULINGS

	Page	Line
Docket Control Order For 150 Days, GRANTED	15	3

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

A handwritten signature in black ink that reads "Sonya M. Ledanski Hyde". The signature is written in a cursive, flowing style.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: July 13, 2023